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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,048	10/17/2003	Richard Boroviak	1652.68551	9182
7590 06/06/2005 GREER, BURNS & CRAIN, LTD. Suite 2500 300 South Wacker Drive Chicago, IL 60606			EXAMINER STRIMBU, GREGORY J	
			ART UNIT 3634	PAPER NUMBER

DATE MAILED: 06/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/688,048

Applicant(s)

BOROVIK, RICHARD

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/17/03</u> . | 6) <input type="checkbox"/> Other: ____ |

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because the legal phraseology such as "means" on line 4 should be avoided. Recitations such as "first vertical" on line 5 are confusing since it is unclear if the applicant is referring to the first vertical member or attempting to set forth another member in addition to the one set forth above. Likewise, recitations such as "support member" on line 5 are confusing since it is unclear if the

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applicant is referring to the one of the support members set forth above or attempting to set forth another support member in addition to the one set forth above. Correction is required. See MPEP § 608.01(b).

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. It is suggested the applicant remove the references to the method since no method claims have been presented.

Claim Rejections - 35 USC § 112

Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "or" on line 1 of claim 1 and line 2 of claims 8-14 render the claims indefinite because it is unclear which one of the two non-equivalent alternatives the applicant is attempting to positively set forth. Recitations such as "means to connect" on line 5 of claim 1 render the claims indefinite because it is unclear if the applicant is invoking 35 USC 112 sixth paragraph or not. If the applicant intends to invoke 35 USC 112 sixth paragraph, it is suggested that the applicant use "means for" language to avoid confusion. Recitations such as "support member" on line 5 of claim 1 render the claims indefinite because it is unclear if the applicant is referring to one of the support members set forth above or is attempting to set forth another support member in addition to the ones set forth above. Recitations such as "to connect lower end" on line 7 of claim 1 are grammatically awkward and confusing. Recitations such as "the

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metal rods have a cross section” on lines 1-2 of claim 3 render the claims indefinite because it is unclear if all of the rods when combined have a cross section of 0.25 inches or if each rod has a cross section of 0.25 inches. Recitations such as “hole” on line 4 of claim 4 render the claims indefinite because it is unclear if the applicant is referring to one of the holes set forth above or is attempting to set forth another hole in addition to the ones set forth above.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 8, 9 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Gibbs. Gibbs discloses a frame assembly 10 for making a gate or a door comprising an upper horizontal member 12, a lower horizontal member 12, a first vertical member 14 and a second vertical member 14, one or more support members 42 provided along the length of each of the upper and lower horizontal members, first connection means (not numbered, but shown in figure 2 as the head of the support member 42) to connect an upper end of the first vertical to one end of a support member provided along the length of the upper horizontal member, second connection means (not shown, but comprising the head of the support member 42) to connect lower end of the first vertical member to one end of support member provided along the length of the lower horizontal

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member, third connection means (not shown, but comprising a nut as set forth in column 3, lines 41-58) to connect an upper end of the second vertical member to a second end of the support member provided along the length of the upper horizontal member and fourth connection means (not shown, but comprising a nut as set forth in column 3, lines 41-58) to connect a lower end of the second vertical to a second end of the support member provided along the length of the lower horizontal member, the support members 42 are threaded rods.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-7 and 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs as applied to claims 1, 2, 8, 9 and 17 above. Gibbs, as set forth above, is silent concerning the diameter of the threaded rods. However, one of ordinary skill in the art is expected to routinely experiment with parameters so as to ascertain the optimum or workable ranges for a particular use. Accordingly, it would have been no more than an obvious matter of engineering design choice, as determined through routine experimentation and optimization, for one of ordinary skill to provide the threaded rods with a diameter of 0.25 inches to ensure that the rods can properly compress the frame assembly while not unduly increasing the weight of the frame

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assembly. Since the end of the support member 42, as shown in figure 4, secures the bracket 18 to the frame assembly and the bracket 18 is used to secure the hinge plate 28 to the frame assembly, said end of the support member secures the hinge 30 to the vertical member 14. Additionally, the lower end of the first and second vertical members 14 are provided with a plurality of holes occupied by the bolts 24.

It should be noted that the head of the threaded rod 42 and its corresponding nut are both considered to be fasteners as the applicant is using the term.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nead, Boroviak, Ray, Dagher et al., Cook et al., Keating, Gow, Groves, Sailor, Neal et al., Anderson, and Weyant are cited for disclosing a tensioning means for reinforcing a frame assembly.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a stylized flourish at the end.

Gregory J. Strimbu
Primary Examiner
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May 27, 2005